

DEFICIENCY PROGRESS REPORT – UPDATE 2

CUPA: SAN BENITO COUNTY DIVISION OF ENVIRONMENTAL HEALTH

Evaluation Dates: November 4 and 5, 2008

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Submittal date (Update 1): February 2, 2009

Deficiencies corrected (Update 1): 1, 6, 7 and 8

Status: Deficiencies 2, 3, 4, and 5 remain outstanding.

Submittal Date: July 13, 2009

Deficiencies corrected (Update 2): 4 and 5

Status: Deficiencies 2 and 3 remain outstanding.

Next Progress Report (3rd Update) Due: October 27, 2009

2. **Deficiency:** The CUPA is not fully tracking and reporting the enforcement actions taken on the Annual Enforcement Summary Report 4.

Corrective Action: By September 30, 2009, the CUPA will verify that the violations and enforcement data on the Annual Enforcement Summary Report 4 will be complete and as accurate as possible. By February 3, 2009, the CUPA will develop an action plan to remedy the situation and implement it. Beginning February 3, 2009, the CUPA will submit a progress report toward correcting this deficiency.

CUPA Update 1: The CUPA mistakenly did not count letters and /or notices sent to a business prior to submitting a case for legal action to be enforcement. It was thought that enforcement was the introduction of the legal system to resolve a non compliant condition.

Insert # 2 - The expanded enforcement report was presented to the State in annual summary report issued in September 2008 showing the enforcement report.

Cal/EPA Response: *Cal/EPA looks forward to tracking the CUPAs ongoing progress to comply with this corrective action. Cal/EPA will review the CUPAs annual summary report submittals for FY' 2008/2009 to verify the deficiency has been adequately addressed.*

CUPA Update 2: The 2008-2009 annual summary report will report 37 corrective action enforcement actions were implemented with two prosecuted by the DA. The previous fiscal year had 8 enforcement actions documented.

Cal/EPA Response to (Update 2): *Cal/EPA looks forward to reviewing the CUPA's annual summary report submissions on the next progress report for compliance, it is anticipated that the deficiency should be corrected by the next progress report.*

3. **Deficiency:** The CUPA has not performed an annual California Accidental Release Prevention (CalARP) self-audit in compliance with California Code of Regulations title 19.

Corrective Action: By February 3, 2009, the CUPA shall perform an annual CalARP performance audit that fulfills the regulatory requirements and submit a copy to Cal/EPA.

CUPA Update 1: The CUPA was unaware of the new CalARP self audit requirement and the self audit is being prepared and should be completed by June 30, 2009.

Cal EMA Response: Cal EMA feels that the time line is acceptable and looks forward to seeing the CUPA's annual CalARP Performance audit in their next progress report.

CUPA Update 2: The CUPA self audit has been completed and is awaiting local review and approval prior to inclusion into the annual summary report.

Cal EMA Response to (Update 2): *The Title 19 Annual Self Audit is a self audit that is to be performed for the internal use of the CUPA and the CUPA is not required to submit the Title 19 Annual Self Audit, however the CUPA is required to perform one annually. With that being said, the CUPA upon approval shall submit the Annual Self Audit to show correction of this deficiency and upon receipt of the Self Audit Cal EMA will see this deficiency as being corrected.*

4. **Deficiency:** The CUPA has not maintained the state mandated inspection frequency for its CalARP facilities within the last three fiscal years.

Corrective Action: By February 3, 2009, the CUPA will develop and submit an action plan which will outline how the CUPA expects to reach the state mandated inspection frequency for the CalARP facilities.

CUPA Update 1: The CalARP audit/inspection schedule is as follows.

February 23 to February 27th to audit and inspect the Blossom Hill Winery Risk Management Plans for Ammonia and Sulfur Dioxide.

March 16 to March 20th to audit and inspect TriCal Risk management Plans for Methyl Bromide.

April 13 to April 17th to audit and inspect Earthbound Farms Risk management Plan for Ammonia.

The Risk Management Plan required from Tru-Leaf for ammonia has not been submitted but is under court order to submit the plan. It will be scheduled when the court order is submitted to this office and a time frame to submit the plan is established.

Cal EMA Response: The dates submitted in this progress report seem to be in line with correcting this deficiency. In the CUPA's next progress report, please include if these CalARP facilities have indeed been inspected, at which time this deficiency will be considered corrected.

CUPA Update 2: To date, all of the CalARP facilities have submitted RMP's and have been inspected by the CUPA.

Cal EMA Response to (Update 2): *Cal EMA considers this deficiency to have been corrected by the CUPA. Keep up the great work.*

- 5. Deficiency:** The monitoring requirements are incomplete on the underground storage tank (UST) operating permit.

Corrective Action: By May 4, 2009, the CUPA will verify that all issued operating permits are complete.

On the first progress report, please submit a revised operating permit.

The CUPA may either completely fill out the monitoring requirements already listed on the current permit or as a condition of the permit, attach a completed and approved monitoring plan (Unified Program Consolidated Form [UPCF] UST-D) to the permit.

CUPA Update 1: The California Health and Safety Code 25284 states "no person may own or operate an underground storage tank or facility unless a permit for its operation has been issued by the local agency. The CUPA issued a standard hazardous materials permit to underground tank facilities that incorporated the Unified Program approach that was used from 1998 until the 2006 evaluation.

In the 2006 evaluation the CUPA was instructed that each permit must include all of the monitoring plan information for each underground tank. The new permit, two to three pages long was required to list all of the monitoring information.

This proved to be too complicated for clerical to fill out and was too big to be posted in a conspicuous place within the facility. This 2006 requirement is really of no value to anyone and it does not meet the spirit of the program in that it does not allow for a consolidated unified permit format.

The CUPA has decided to return to the consolidated permit format that is inclusive for all of the hazardous materials programs under the CUPA umbrella.

New monitoring plan forms have been sent out to each underground tank facility for updating. These forms are completed by the facility and returned to the CUPA. The monitoring plans are therefore maintained onsite at the facility and on file by the CUPA and in addition monitoring plans are inspected annually at each facility. Although it is wasteful and unnecessary, the monitoring plans will be included in the annual permit unless the State would reconsider this deficiency and allow the monitoring plans to be maintained on file both at the facility and at the Health Department.

Insert # 3

Copy of 2009-2010 Underground Tank Facility Permit with a copy of the updated monitoring plan.

SWRCB Response: *The CUPA is making good progress towards correcting this deficiency. On the next progress report, please submit a revised copy of your UST operating permit. Attached to this response, is an example of a UST operating permit. On the backside, under section h (9), the CUPA will find an easy fix to not having to attach the approved UPCF-D. If the CUPA would like, the SWRCB will contact the supplied permit maker and get a word version so that cutting and pasting can be done. The SWRCB also agrees that having all required paperwork onsite and in facility file is recommended, so that paper is not wasted every year when printing out new permits. One suggestion, § 2712 states (h) The local agency shall provide the permittee with a written list of all applicable requirements of Chapter 6.7 and 6.75 of the Health and Safety Code and these regulations. An easy way to do this would be copy and paste the whole section h from the supplied permit. At a minimum, add chapter 6.75 to the already mentioned chapter 6.7. If there are any questions, please contact Sean Farrow to get deficiency corrected.*

CUPA Update 2: The new permit format has been approved by the State Water Resources Control Board and is currently in use. The new permit is attached.

SWRCB Response to (Update 2): *The SWRCB considers this deficiency as corrected, no further updates are required.*